

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SAL J. CARDINALLI)

For Appellant: Sal J. Cardinalli
in pro. per.
For Respondent: James T. Philbin
Supervising Counsel.

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Sal J. Cardinalli for refund of penalties in the total amount of \$266.00 for the year 1977. Respondent Franchise Tax Board concedes that in the event this board finds in favor of the appellant herein, the correct amount to be refunded would be \$269.00.

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During 1977 appellant was employed by the County of **Marin**, California. On or about **June 12, 1978**, he submitted an unsigned 1977 personal income tax return Form 540 which contained no information regarding his income or allowable deductions. In most of the spaces provided for such financial data, he either placed asterisks or wrote "object: self-incriminating." On that form he reported no tax liability, but he did claim a renter's credit (**\$37.00**), and requested a refund of \$869.61, the amount of California personal income tax withheld from his salary during the year.

On July 14, 1978, respondent notified appellant that the incomplete form which he had submitted for 1977 did not constitute a valid return and demanded that he file a properly completed return within 30 days. Appellant's only response to that notice was a letter dated August 14, 1978, in which he expounded on his constitutional rights and stated his belief that he was not required to file a return or pay any tax.

Thereafter, respondent obtained information from appellant's employer indicating that in 1977 appellant had received wages and compensation in the amount of **\$17,091.00** and confirming that \$869.61 had been withheld from his salary. On the basis of that and other available information, respondent issued a proposed assessment of additional personal income tax in the amount of \$881.01. Included in the assessment were penalties totalling \$266.90 for failure to file a return, failure to file upon notice and demand, and negligence. Appellant responded to this notice on December 7, 1978, with a letter protesting the tax deficiency as being inaccurate and objecting to the imposition of the penalties. He still did not file a properly completed 1977 return. In due course, respondent affirmed its proposed assessment of tax and penalties.

On or about March 26, 1979, appellant filed a valid 1977 return wherein he reported salary income of **\$17,091.00** and a tax liability of \$876.30. After offsetting a renter's credit (\$37.00) and the amount of tax withheld from his salary (**\$869.61**), he concluded that he had overpaid his tax for 1977 by \$30.61 and he requested a refund of that amount. Respondent accepted as correct the information reported in the delinquent return, revised its tax **assessment** accordingly, and issued the refund. It also cancelled the late filing penalty which had initially been imposed and made

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appropriate adjustments in the penalty for failure to file upon notice and demand and the negligence penalty.

On October 1, 1979, respondent issued an Order to Withhold Personal Income Tax in the amount of \$269.00 from appellant's salary. In response to that order, appellant paid the amount stated to be owing and filed **a claim** for refund of the penalties only, apparently conceding his liability for the self-assessed amount of tax. Appellant's refund claim was denied by respondent, and this appeal followed. The propriety of the penalties imposed for failure to file upon notice and demand and for negligence is therefore the only matter before this board.

Insofar as it is relevant here, section 18461 of the Revenue and Taxation Code provides that every individual taxable under the Personal Income Tax Law **must** file an annual return with respondent unless the individual's income is less than a specified amount. The record before us indicates clearly that appellant herein was required to file a 1977 return under this statute. Furthermore, it is well settled that an **uninformative** Form 540 such as the one initially submitted by appellant for 1977 does not constitute a valid return. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.)

The first penalty in issue here was imposed by respondent pursuant to section 18683 of the Revenue and Taxation Code, which provides, in pertinent part:

If any taxpayer ... fails or refuses to make and file a return required by this part upon notice and demand by the Franchise Tax Board, then, unless this failure is due to reasonable cause and not willful neglect, the Franchise Tax Board may add a penalty of **25** percent of the amount of tax determined pursuant to Section 18648 or of any deficiency tax assessed by the Franchise Tax Board concerning the assessment of which the ... return was required.

In its letter of July 14, 1978, respondent demanded that appellant file a properly completed 1977 return within 30 days of that date. Appellant failed to do so. It therefore appears that the section 18683 penalty was properly imposed, and the burden rests upon appellant to prove that was not the case. (Appeal of David A. and

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Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.) To meet that **burden**, appellant herein must establish that his failure to comply with respondent's demand was due to reasonable cause and not willful neglect.

Appellant's primary argument in opposition to the penalty is based upon the fact that it was ultimately determined that he owed **no** additional tax for 1977, after allowance of the renter's credit and a credit for the amount of California **personal** income tax withheld from his salary. He argues that, under these **circumstances**, there could not have been any willful neglect on his part and there was reasonable cause for his failure to file a return upon notice and demand from respondent. We do not agree.

The fact that it was ultimately determined that appellant was entitled to a refund of tax for 1977 does not alter the fact that he failed to respond within the time specified to the formal notice and demand that he file a return for that year. It is precisely that failure to respond which section 18683 was designed to penalize. (Appeal of Frank E. and Lilia Z. Hublou, Cal. St. Bd. of Equal., July 26, 1977.) Furthermore, in construing the phrase "reasonable cause," as it is used in federal penalty provisions, the United States Tax Court has concluded that a taxpayer's belief that he owed no tax and was entitled to a refund because of excess **withholding** does not constitute reasonable cause for failure to file a timely return. (Charles Armaganian, ¶ 78,305 P-H Memo. T.C. (1978); Douglas J. M. Graham, ¶ 66,169 P-H Memo. T.C. (1966).) Other broad **constitutional** arguments made by appellant as to why the penalty was improperly imposed are totally without merit. (See Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.)

Appellant makes similar arguments in opposition to the negligence penalty imposed pursuant to section 18684 of the Revenue and Taxation Code. That section provides:

If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 percent of the total amount of the deficiency, in addition to the deficiency and other penalties provided in this article,, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

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As we have already noted, appellant herein had sufficient income in 1977 to require him to file a California personal income tax return. (Rev. & Tax. Code, § 18401.) Respondent's regulations prescribe certain **rules which are to be followed by taxpayers** in preparing their returns. (See, e.g., Cal. Admin. Code, tit. 18, reg. 18401-18404(e) & reg. 18401-18404(f).) Upon review of the record, we have no difficulty concluding that appellant's actions with respect to the preparation of his 1977 return demonstrate negligence or an intentional disregard of rules and regulations. Certainly appellant has failed to sustain his burden of proving otherwise.

Furthermore, respondent properly based its computation of the penalties involved in this appeal on the full amount of appellant's tax liability **as established** by his delinquent 1977 return. Even though it ultimately was determined that appellant was entitled to a refund, his failure to file a timely **1977** return meant that on April 15, 1978, **the due date of the return**, a tax deficiency existed in the amount of appellant's total correct tax liability for 1977. (See Appeal of Frank E. and Lilia Z. Hublou, supra.) The deficiency existed regardless of the fact that appellant was **entitled** to a credit for the tax withheld from his wages. (See Rev. & Tax. Code, § 18591.1, subd. (b)(1).) The credits he was allowed merely operated to reduce or offset the amount owed on his total tax liability, as established by his delinquent **1977** return.

Finally, we note that from the outset of these proceedings, appellant has insisted that he has been improperly deprived of his "inalienable and civil right to a jury trial." Generally speaking, the right to a jury trial which is guaranteed by the federal Constitution and by the California Constitution extends only to those cases where that right existed at common law. (See Atlas Roofing Co. v. Occup. Safety Comm'n., 430 U.S. 442, 449 [51 L.Ed.2d 464] (1977); Sonleitner v. Superior Court, 158 Cal.App.2d 258, 259 [322 P.2d 496] (1958).) In the absence of special legislation, it is not available in proceedings which are purely statutory in origin and therefore unknown to the common law. (NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 [81 L.Ed. 893] (1937).) Consequently, as a matter of constitutional law, there is no right to a jury trial in tax matters. (Wickwire v. Reinecke, 275 U.S. 101 [72 L.Ed. 1841] (1927); Olshausen v. Commissioner, 273 F.2d 23, 27 (9th Cir. 1959); Sonleitner v. Superior Court; supra.) A fortiori, there is no constitutional right,

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nor, appropriately, any statutory right to a **jury** trial in administrative proceedings before respondent or this board.

For the reasons stated above, respondent's action in this matter must be sustained.

O R D E R

Pursuant ~~to the~~ views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, - pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Sal J. Cardinalli for refund of penalties in'the total amount of \$266.80 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day
of March, 1981, by the State Board of Equalization,
with Members Dronenburg, Reilly and Nevins present.

Ernest J. **Dronenburg, Jr.**, Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member